THE SUPREME COURT OF THE STATE OF ALASKA

TRAVIS BUNTIN, Plaintiff, v. SCHLUMBERGER TECHNOLOGY CORPORATION, Defendant.	)	Supreme Court Nos. S-17309/17519 U.S. District Court No. 3:16-CV-00073 (TMB) O P I N I O N No. 7521 – April 23, 2021

Certified Questions from the United States District Court for the District of Alaska, Timothy M. Burgess, Chief Judge.

Appearances: Daniel I. Pace, Pace Law Offices, Anchorage, Timothy W. Seaver, Seaver & Wagner, LLC, Anchorage, and Kenneth W. Legacki, Kenneth W. Legacki, P.C., Anchorage, for Plaintiff. William J. Evans, Sedor Wendlandt Evans & Filippi LLC, Anchorage, Aaron D. Sperbeck, Birch Horton Bittner & Cherot, Anchorage, Martin J. Regimbal and Jennifer D. Sims, The Kullman Firm, P.L.C., Columbus, Mississippi, and Samuel Zurik, III, Robert P. Lombardi, and Bryan Edward Bowdler, The Kullman Firm, P.L.C., New Orleans, Louisiana, for Defendant. Gregory S. Fisher, Davis Wright Tremaine LLP, Anchorage, for Amicus Curiae The Alaska Society for Human Resource Management, State Council.

Before: Bolger, Chief Justice, Winfree, Maassen, Carney, and Borghesan, Justices.

WINFREE, Justice.

I. INTRODUCTION

Schlumberger Technology Corporation is a Texas corporation providing technology services to the oil and gas industry in Alaska. Travis Buntin worked for Schlumberger in Alaska until early 2016. Shortly thereafter Buntin sued Schlumberger in federal court alleging, among other things, failure to pay overtime compensation in violation of the Alaska Wage and Hour Act (AWHA). Schlumberger responded that Buntin was not entitled to overtime compensation because the AWHA exempts individuals employed "in a bona fide executive, administrative, or professional capacity" from overtime payment.[1]

The federal court certified the following questions to us:[2]

> 1. What standard of proof applies to exemptions to the overtime provisions of the Alaska Wage and Hour Act (AWHA)?
>
> 2. Following *Encino Motorcars v. Navarro*, 138 S. Ct. 1134 (2018), should exemptions under the Alaska Wage and Hour Act (AWHA) be given a narrow or fair interpretation?[3]

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[1] *See* AS 23.10.055(a)(9)(A).

[2] Alaska Appellate Rule 407(a) permits us to answer questions of Alaska law certified to us by a federal court when those questions of law "may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in [our] decisions."

[3] *See Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1142 (2018) (explaining that "[b]ecause the [Fair Labor Standards Act] gives no 'textual indication' that its exemptions should be construed narrowly, 'there is no reason to give [them] anything other than a fair (rather than a "narrow") interpretation' " (third alteration in original) (quoting Antonin Scalia & Bryan A. Garner, READING LAW: THE (continued...)

We accepted the certified questions. The parties submitted full briefing on the questions, and amicus curiae Alaska Society for Human Resource Management, State Council, submitted a brief on the standard of proof question.

We conclude that an employer must prove that an AWHA exemption applies by a preponderance of the evidence, and we reverse our precedent to the contrary. We also conclude that *Encino*'s interpretive principle that courts must give federal Fair Labor Standards Act (FLSA) exemptions a fair interpretation applies when the AWHA text explicitly requires alignment with FLSA interpretations.

II. STANDARD OF REVIEW

We exercise our independent judgment when answering a certified question of law and "select the rule of law that is most persuasive in light of precedent, reason, and policy."[4]

III. DISCUSSION

A. AWHA's Framework And 2005 Amendments

The two certified questions require an examination of the AWHA and our case law interpreting it. The AWHA has its origins in federal labor laws. The 1938

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[3] (...continued)
INTERPRETATION OF LEGAL TEXTS 363 (2012))).

[4] *Kallstrom v. United States*, 43 P.3d 162, 165 (Alaska 2002). We previously have stated that we "stand in the shoes of the certifying court, yet exercise our independent judgment" when answering a certified question. *See All Am. Oilfield, LLC v. Cook Inlet Energy, LLC*, 446 P.3d 767, 771 (Alaska 2019) (quoting *Attorneys Liab. Prot. Soc'y, Inc. v. Ingaldson Fitzgerald, P.C.*, 370 P.3d 1101, 1105 (Alaska 2016)); *Schiel v. Union Oil Co. of Cal.*, 219 P.3d 1025, 1029 (Alaska 2009) (quoting *Edenshaw v. Safeway, Inc.*, 186 P.3d 568, 569 (Alaska 2008)); *FDIC v. Laidlaw Transit, Inc.*, 21 P.3d 344, 346 (Alaska 2001). To the extent "stand[ing] in the shoes of the certifying court" suggests we exercise anything except our own independent judgment when determining issues of Alaska law, we disavow that language.

FLSA was "the original anti-poverty law, enacted by Congress as the country was struggling out of [the] throes of the Great Depression."[5] Through the FLSA Congress established minimum wage floors and maximum workweek hours.[6] Congress also authorized states to establish their own labor laws further protecting workers.[7] In 1959 the Alaska legislature enacted the AWHA.[8] The policy behind the AWHA is to:

> (1) establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency, and general well-being, and
>
> (2) safeguard existing minimum wage and overtime compensation standards that are adequate to maintain the health, efficiency, and general well-being of workers against the unfair competition of wage and hour standards that do not provide adequate standards of living.[9]

Similar to the FLSA, the AWHA provides a minimum wage and requires employers to pay workers overtime compensation after a maximum number of hours in a workweek

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[5] *Webster v. Bechtel, Inc.*, 621 P.2d 890, 894 (Alaska 1980) (quoting Robert N. Willis, *The Evolution of the Fair Labor Standards Act*, 26 U. MIAMI L. REV. 607, 607-08 (1972)).

[6] *Id.*

[7] 29 U.S.C. § 218(a) (2018) ("No provision of [the FLSA] shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter . . . ."); *see also Quinn v. Alaska State Emps. Ass'n/Am. Fed'n of State, Cty. & Mun. Emps., Local 52*, 944 P.2d 468, 471 (Alaska 1997) (explaining that "states 'are given freedom of action to establish higher standards than those established by' FLSA" (quoting *E. Sugar Assocs. v. Pena*, 222 F.2d 934, 936 (1st Cir. 1955))).

[8] Ch. 171, SLA 1959.

[9] AS 23.10.050.

or workday[10] unless an exemption applies.[11] But the AWHA mandates a more generous minimum wage and imposes stricter overtime compensation requirements.[12]

The AWHA's exemptions are codified at AS 23.10.055. The exemptions relevant to this case are those involving individuals employed "in a bona fide executive, administrative, or professional capacity,"[13] often referred to as the "white collar" exemptions.[14] Because the FLSA does not preempt the AWHA,[15] employees often assert unpaid overtime claims under both state and federal law.[16] Although the state and federal white collar exemptions are similarly worded, courts once used different tests to

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[10] AS 23.10.060; 29 U.S.C. § 207.

[11] AS 23.10.055; 29 U.S.C. § 213.

[12] *Compare* AS 23.10.065(a) (setting Alaska's minimum wage at $9.75 per hour and requiring annual adjustments for inflation), *with* 29 U.S.C. § 206(a)(1) (setting national minimum wage at $7.25 per hour); *compare* AS 23.10.060(b) ("An employee is entitled to overtime compensation for hours worked in excess of [8] hours a day. An employee is also entitled to overtime compensation for hours worked in excess of 40 hours a week."), *with* 29 U.S.C. § 207(a)(1) ("[N]o employer shall employ any of his employees who in any workweek is engaged in commerce . . . for a workweek longer than [40] hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.").

[13] AS 23.10.055(a)(9)(A).

[14] Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 69 Fed. Reg. 22122, 22122 (Apr. 23, 2004) (codified at 29 C.F.R. pt. 541).

[15] *Webster v. Bechtel, Inc.*, 621 P.2d 890, 898-99 (Alaska 1980).

[16] *See, e.g.*, *Geneva Woods Pharmacy, Inc. v. Thygeson*, 181 P.3d 1106, 1107 (Alaska 2008) (regarding former employee's overtime wage claim brought under both AWHA and FLSA); *Bliss v. Bobich*, 971 P.2d 141, 143-44, 146 (Alaska 1998) (regarding former employees' various claims brought under both AWHA and FLSA).

determine whether an exemption applied.[17] The use and application of different tests led to confusion among employers.[18] The legislature accordingly amended the AWHA in 2005 to "provid[e] definitions for persons employed in administrative, executive, and professional capacities."[19] The amendments explicitly aligned the definitions and interpretations of the white collar exemptions with federal law: " '[B]ona fide executive, administrative, or professional capacity' has the meaning and shall be interpreted in accordance with 29 U.S.C. 201-219 ([FLSA] of 1938), as amended, or the regulations

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[17] Minutes, H. Labor & Commerce Standing Comm. Hearing on H.B. 182, 1st Sess. 24th Leg., 1st Sess. 4:14:47-4:18:23 (Mar. 16, 2005) (testimony of John Sedor on behalf of Alaska Restaurant & Beverage Ass'n; Alaska Hotel Lodging Ass'n; Soc'y for Human Res. Mgmt., Alaska State Council; Anchorage Soc'y for Human Res. Members Mgmt.) ("One of the problems with the current state of the law . . . is that the exemptions use the same words, so under both the federal law and the state law we have exemptions for administrative, executive, and professional [employees]. . . . It's the same exemption under federal law as state law, but they're deceptively similar, so there's two wholly different tests that apply to each of them." (alteration in original)); *see also Grimes v. Kinney Shoe Corp.*, 902 F. Supp. 1070, 1074 (D. Alaska 1995), *superseded by statute*, ch. 90, § 2, SLA 2005 (explaining that although both state and federal acts exempt bona fide executive employees, applicable federal regulations established both a "long test" and a "short test," but then-applicable Alaska regulations had adopted only "long test").

[18] *See* Minutes, H. Labor & Commerce Standing Comm. Hearing on H.B. 182, *supra* note 17, at 4:14:47-4:18:23 (testimony of John Sedor), 4:52:43-4:55:39 (testimony of Robert Morris, Human Res. Dir., Alaska Children's Servs., Legislative Co-Chair, Anchorage Soc'y of Human Res. Mgmt.; testimony of Cara Fox, Human Res. and Admin. Dir., Hawaiian Vacations, Legislative Co-Chair, Anchorage Soc'y of Human Res. Mgmt.).

[19] Ch. 90, SLA 2005. Although this case concerns the white collar exemptions, it should be noted that the 2005 amendments also brought the AWHA's exemptions regarding "computer systems analyst[s], computer programmer[s], software engineer[s], or other similarly skilled workers," into alignment with the FLSA. *Id.* at § 1.

adopted under those sections."[20]

Hearing testimony emphasized that the AWHA amendments would address only one aspect: exemptions for salaried private sector employees.[21] Discussions regarding the amendments also focused almost entirely on removing Alaska's test for determining if an individual qualified as an executive, administrative, or professional employee is exempt from overtime requirements, and adopting the federal "primary duties" test.[22] The amendment's sponsor, Representative Norman Rokeberg, explained:

> [H.B. 182] sets forth some clarifications to [the AWHA] by basically clarifying and redefining to a limited degree the definitions of executive capacity, administrative capacity, and professional capacity within our code. The primary step of this bill before us eliminates what's known as the long test or the 80:20 test or, in the retail trade, the 60:40 test.[23]

Notably, the amendments did not adopt the federal definitions for all exemptions.[24]

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[20] AS 23.10.055(c)(1). The federal definitions for "bona fide executive, administrative, or professional" employees exempt from overtime are promulgated by the federal Department of Labor at 29 C.F.R. §§ 541.100-304.

[21] *See* Minutes, H. Labor & Commerce Standing Comm. Hearing on H.B. 182, *supra* note 17, at 4:09:40-4:14:47 (testimony of Rep. Norman Rokeberg); 4:14:47-4:18:23 (testimony of John Sedor); Minutes, Sen. Fin. Comm. Hearing on S.B. 131 [House Bill (H.B.) 182], 24th Leg., 1st Sess. (Apr. 15, 2005) (written statement of Sen. Con Bunde, sponsor of S.B. 131).

[22] *See generally* Minutes, H. Labor & Commerce Standing Comm. Hearing on H.B. 182, *supra* note 17, at 4:09:40-5:15:53; Minutes, Sen. Fin. Comm. Hearing on S.B. 131 [H.B. 182], *supra* note 21, at 9:06:00-9:35:50.

[23] Minutes, H. Labor & Commerce Standing Comm. Hearing on H.B. 182, *supra* note 17, at 4:09:40-4:14:47 (first alteration in original) (testimony of Rep. Norman Rokeberg).

[24] *See, e.g.*, Minutes, Sen. Fin. Comm. Hearing on S.B. 131 [H.B. 182], *supra* (continued...)

B. The Standard Of Proof Question

1. Overview

We now turn to the first certified question:

> What standard of proof applies to exemptions to the overtime provisions of the Alaska Wage and Hour Act?[25]

We briefly have stated on three separate occasions, beginning with a holding in *Dayhoff v. Temsco Helicopters, Inc.* in 1993, that the applicable standard of proof for AWHA exemptions is beyond a reasonable doubt.[26]

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[24] (...continued)
note 21, at 9:06:00-9:35:50 (Apr. 15, 2005) ("Senator Olson asked whether this legislation would align with FLSA[;] . . . . Sedor replied that certain aspects of Alaska's overtime standards differ from the federal standard. The federal standard is 40 hours a week whereas the Alaska standard is [8] hours a day or 40 hours a week. This legislation would substantially move Alaska closer to the FLSA exempt definitional standards in regards to executive, administrative, and professional employees . . . . This legislation would provide an answer to the question 'what is unique about overtime in Alaska?' The answer, in his perspective, is that Alaska pays higher wages than the rest of the nation. Therefore, to qualify for an exemption, Alaskan businesses must compensate an exempt administrative, executive[,] or professional employee with a rate that is 'two times the minimum' wage. Therefore, an exempt employee's salary in Alaska would be higher than the federal exempt wage requirement.").

[25] Standard of proof refers to "[t]he degree or level of proof demanded in a specific case." *Standard of Proof*, BLACK'S LAW DICTIONARY (11th ed. 2019). The burden of proof is "[a] party's duty to prove a disputed assertion or charge" and encompasses two distinct concepts: the burden of persuasion and the burden of producing evidence. *Burden of Proof*, BLACK'S LAW DICTIONARY (11th ed. 2019). Although the two concepts are occasionally conflated, the "standard of proof" refers to the standard by which a party must prove and persuade (i.e., beyond a reasonable doubt, by clear and convincing evidence, or by a preponderance of the evidence). *See id.*

[26] 848 P.2d 1367, 1372 (Alaska 1993) ("If there is a reasonable doubt . . . whether an employee meets the criteria for exemption, the employee should be ruled (continued...)

In *Dayhoff* a helicopter pilot sued his former employer, Temsco Helicopters, Inc., for unpaid overtime wages under the AWHA.[27] Temsco asserted that Dayhoff was an exempt professional.[28] The superior court granted summary judgment in Temsco's favor, holding, among other things, that Dayhoff could not recover under the AWHA because he was an exempt professional.[29] On appeal we described the process for proving an AWHA exemption, stating:

> AWHA is based upon the [FLSA] and federal interpretations of FLSA are relevant in interpreting AWHA. Under federal law, the employer has the burden to prove the exemption is applicable. "Exemptions are to be narrowly construed against the employer." "If there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee should be ruled non-exempt."[30]

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[26] (...continued)
non-exempt." (quoting *Adam v. United States*, 26 Cl. Ct. 782, 786 (Cl. Ct. 1992))), *superseded on other grounds by statute*, ch. 90, § 2, SLA 2005; *see also Resurrection Bay Auto Parts, Inc. v. Alder*, 338 P.3d 305, 308 n.14 (Alaska 2014) (noting standard of proof "[wa]s not raised on appeal," but we "have held . . . employers are required to prove AWHA exemptions 'beyond a reasonable doubt' " (quoting *Fred Meyer of Alaska, Inc. v. Bailey*, 100 P.3d 881, 884 (Alaska 2004))); *Fred Meyer*, 100 P.3d at 884 & n.11 (briefly noting standard of proof for AWHA exemption is "beyond a reasonable doubt").

[27] 848 P.2d at 1368-69.

[28] *Id.* at 1371-72.

[29] *Id.* at 1369.

[30] *Id.* at 1371-72 (citations omitted) (first quoting *Reeves v. Int'l Tel. & Tel. Corp.*, 357 F. Supp. 295, 297 (W.D. La. 1973), *aff'd* 616 F.2d 1342, 1351 (5th Cir. 1980); then quoting *Adam*, 26 Cl. Ct. at 786) (citations omitted)). *But see Moody v. Royal Wolf Lodge*, 339 P.3d 636, 639-42 (Alaska 2014) (explaining change in AHWA exemption determination since legislature's 2005 AWHA amendments).

Viewing the facts in Dayhoff's favor, we concluded: "Dayhoff [could], at most, be classified as a highly trained technician and not as a professional."[31] We therefore concluded: "Temsco [did] not meet the burden of showing that the exemption is applicable."[32]

Contrary to Schlumberger's arguments, this was not dicta:

> Dicta is defined as "[o]pinions of a judge which do not embody the resolution or determination of the specific case before the court. Expressions in [the] court's opinion which go beyond the facts before [the] court . . . are individual views of [the] author of [the] opinion and not binding in subsequent cases as legal precedent." [33]

Our applicable standard of proof statement was not opinion or conjecture. It was a statement of law explaining an employer's heavy burden for asserting an AWHA exemption; we relied on this conclusion of law when deciding that granting Temsco summary judgment was erroneous. *Dayhoff* is binding precedent on this point unless we have reason to overrule it.[34]

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[31] *Dayhoff*, 848 P.2d at 1372.

[32] *Id.*

[33] *VECO, Inc. v. Rosebrock*, 970 P.2d 906, 922 (Alaska 1999) (first alteration in original) (quoting *Dicta*, BLACK'S LAW DICTIONARY (6th ed. 1990)).

[34] We reiterated the standard of proof for AWHA exemptions a few years later in *Fred Meyer of Alaska, Inc. v. Bailey.* 100 P.3d 881, 884 (Alaska 2004) ("The burden is on the employer to prove beyond a reasonable doubt that the employee is exempt."); *see also Resurrection Bay Auto Parts, Inc. v. Alder*, 338 P.3d 305, 308 n.14 (Alaska 2014) (acknowledging *Dayhoff* established standard of proof and stating "[a]lthough the burden-of-proof issue is not raised on appeal, we note that other than the Fourth, the circuits that have explicitly adopted a standard of proof for the applicability of FLSA exemptions require proof by a preponderance of the evidence").

2. Schlumburger's argument that the 2005 AWHA amendments specify the applicable standard of proof for AWHA exemptions

Schlumberger argues that the 2005 amendments mandate that AWHA exemptions "be interpreted in accordance with the FLSA" and that the preponderance of the evidence standard is "the burden that best fosters consistency between the AWHA and [the] FLSA." Buntin responds that "the [standard of proof] for establishing exemptions under the AWHA is not mentioned anywhere within the legislative history of the 2005 amendments."

As Schlumberger concedes, nowhere in the text of those amendments does the legislature expressly specify the standard of proof for the exemptions. The legislature's focus when enacting the 2005 amendments was creating a single standard for determining who qualifies as an exempt employee under the state and federal white collar exemptions. And the standard of proof for establishing exemptions also is not provided in any other portions of the AWHA's text.[35] Schlumberger implies that the AWHA's adoption of the federal definitions for white collar exemptions is an implicit adoption of the preponderance of the evidence standard. But the FLSA does not provide

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[35] By contrast, the legislature has specified the standard of proof related to awards of liquidated damages under the AWHA. In 1995 the legislature passed H.B. 115, allowing a prevailing employee to obtain liquidated damages and attorney's fees from the employer unless the employer showed "by clear and convincing evidence that the act or omission giving rise to the action was made in good faith and that the employer had reasonable grounds for believing that the act or omission was not in violation of AS 23.10.060." Ch. 37, §§ 1-3, SLA 1995. The legislature having previously specified a different affirmative defense's standard of proof cuts against Schlumberger's argument that the legislature intended its 2005 AWHA amendments to specify by implication the standard of proof for exemptions. Had the legislature intended to impose a standard of proof for exemptions, it would have specified as much in the amendments' text.

the standard of proof applicable to overtime exemptions.[36] Nor do federal regulations defining the FLSA's exemptions specify a standard of proof.[37]

Because the AWHA's text and the corresponding FLSA text are silent on the standard of proof for establishing exemptions, the relevant standard of proof is an issue of common law.[38] Our 1993 *Dayhoff* ruling therefore is prevailing precedent.[39]

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[36] *See* 29 U.S.C. §§ 201-219; *see also Lederman v. Frontier Fire Prot., Inc.*, 685 F.3d 1151, 1156-60 (10th Cir. 2012) (discussing federal cases that consider burden of proof on employers asserting FLSA exemptions and adopting common law preponderance of evidence standard); *Abou-el-Seoud v. United States*, 136 Fed. Cl. 537, 563 (Fed. Cl. 2018) ("Neither the United States Supreme Court nor the United States Court of Appeals for the Federal Circuit has discussed the relevant evidentiary standard to be applied in determining whether an employee is exempt from the FLSA.").

[37] *See* 29 C.F.R. §§ 541.100-.710.

[38] " 'Common law' is the body of law derived from judicial decisions rather than from statutes or constitutions; it is a creation of the courts rather than of legislatures." 15A C.J.S. *Common Law* § 2 (2020) (footnote omitted); *see Young v. Embley*, 143 P.3d 936, 945 (Alaska 2006) (alteration in original) ("The common law . . . furnishes one of the most reliable backgrounds upon which analysis of the objects and purposes of a statute can be determined.") (quoting 2B NORMAN SINGER, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 50:01 at 139 (6th ed. 2000))); *Webb v. City & Borough of Sitka*, 561 P.2d 731, 733-34 (Alaska 1977) ("The common law is not a rigid and arbitrary code, crystalized and immutable. Rather it is flexible and adapts itself to changing conditions." (quoting *State v. Morris*, 555 P.2d 1216, 1223 (Alaska 1976) (Boochever, C.J., dissenting))); *see also Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108 (1991) ("Congress is understood to legislate against a background of common-law adjudicatory principles. Thus, where a common-law principle is well established . . . the courts may take it as given that Congress has legislated with an expectation that the principle will apply except 'when a statutory purpose to the contrary is evident.' " (quoting *Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783 (1952) (citations omitted))); *Steadman v. SEC*, 450 U.S. 91, 95 (1981) ("Where Congress has not prescribed the degree of proof which must be adduced by the proponent of a rule or order to carry its burden of persuasion in an administrative proceeding, this Court has felt at (continued...)

3. Schlumberger's argument for overruling *Dayhoff*

Schlumberger asks us to overrule *Dayhoff*'s beyond a reasonable doubt standard of proof for AWHA exemptions, arguing that it was originally erroneous and no longer is sound because of changed conditions. Amicus curiae also supports overruling *Dayhoff*'s standard, arguing that a preponderance of the evidence standard comports with federal interpretations and that Alaska's beyond a reasonable doubt standard "fosters confusion and inconsistent results." Buntin counters that Schlumberger has failed to identify a "clear and obvious error" in the *Dayhoff* ruling; that the Alaska legislature has remained silent regarding the standard of proof applicable to the AWHA's exemptions; and that Schlumberger has not shown how overruling our precedent would do more good than harm.

Schlumberger bears the "heavy threshold burden" of demonstrating "compelling reasons for reconsidering the prior ruling."[40] "[W]e 'will overrule a prior

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[38] (...continued)
liberty to prescribe the standard, for '[i]t is the kind of question which has traditionally been left to the judiciary to resolve.' " (alteration in original) (quoting *Woodby v. INS*, 385 U.S. 276, 284 (1966))).

[39] *See Moody v. Royal Wolf Lodge*, No. 3AN-08-7621 CI, 2012 WL 12528090 (Alaska Super. Jan. 25, 2012) ("The fact that the legislature amended AWHA to make it consistent with the federal [FLSA] regulations does not necessarily mean that the legislature intended to abrogate the standard of proof articulated in *Dayhoff* and *Fred Meyer*. The amendments do not contain a specific provision on the standard of proof for establishing that an employee is exempt from the act, nor is this issue mentioned anywhere in HB 182's legislative history.").

[40] *Thomas v. Anchorage Equal Rights Comm'n*, 102 P.3d 937, 943 (Alaska 2004); *Pratt & Whitney Can., Inc. v. Sheehan*, 852 P.2d 1173, 1175 (Alaska 1993) ("When a common law court is asked to overrule one of its prior decisions, the principle of stare decisis is implicated. . . . [S]tare decisis is a practical, flexible command that (continued...)

decision only when clearly convinced [(1)] that the rule was originally erroneous or is no longer sound because of changed conditions, and [(2)] that more good than harm would result from a departure from precedent.' "[41] As we decide below, Schlumberger has met that burden.

a. *Dayhoff*'s standard of proof ruling was originally erroneous.

Schlumberger argues that *Dayhoff* was originally erroneous because it mistakenly cited a federal claims court case involving FLSA requirements for federal employees as the basis for the standard of proof for AWHA exemptions. "A decision may prove to be originally erroneous if the rule announced proves to be unworkable in practice"[42] or if "the other party 'would *clearly* have prevailed if [relevant issues the prior court failed to address] had been fully considered.' "[43]

In *Dayhoff* we considered the corresponding federal law regarding exemptions and quoted the federal claims court in *Adam v. United States*: "If there is a reasonable doubt . . . whether an employee meets the criteria for exemption, the

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[40] (...continued)
balances our community's competing interests in the stability of legal norms and the need to adapt those norms to society's changing demands.").

[41] *Wassillie v. State*, 411 P.3d 595, 611 (Alaska 2018) (second and third alterations in original) (quoting *Thomas*, 102 P.3d at 943).

[42] *Pratt & Whitney Can.*, 852 P.2d at 1175; *see also In re Hospitalization of Naomi B.*, 435 P.3d 918, 926-27 (Alaska 2019) (discussing "unworkable in practice" scenario).

[43] *Wassillie*, 411 P.3d at 611 (alteration in original) (quoting *Thomas*, 102 P.3d at 943).

employee should be ruled non-exempt."[44] But *Adam* was taken out of context.

Adam exclusively concerned federal employees. Senior border patrol agents had sued the federal government for overtime wages under the FLSA.[45] The government argued that the agents bore the burden of establishing the court's jurisdiction over the overtime claims and that in establishing jurisdiction the agents had to prove the merits of their overtime claims.[46] The court rejected the government's argument, noting that the United States Supreme Court already had "taught that there is a distinction between the right to be heard to make a claim under a statute and the right to relief under the circumstances. A shortcoming in the latter proof 'does not constitute an objection to jurisdiction.' "[47] The court further quoted from an attachment to a Civil Service Commission's federal personnel manual letter: "[N]umerous judicial precedents have firmly established the principle [] that: . . . [t]he burden of proof rests with the employer who asserts the exemption . . . . Thus, if there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee should be ruled nonexempt."[48]

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[44] *Dayhoff v. Temsco Helicopters, Inc.*, 848 P.2d 1367, 1372 (Alaska 1993) (quoting *Adam v. United States*, 26 Cl. Ct. 782, 786 (Cl. Ct. 1992)), *superseded in part by statute*, ch. 90, § 2, SLA 2005.

[45] *Adam*, 26 Cl. Ct. at 783-84.

[46] *Id.* at 785 ("Defendant claims that because the plaintiffs have the burden of proving that this court has jurisdiction, they must prove that they are entitled to overtime under the FLSA in order to perfect the requirements of the Tucker Act waiver of sovereign immunity." (footnote omitted)).

[47] *Id.* (quoting *United States v. Clarke*, 33 U.S. 436, 446 (1834)).

[48] *Id.* at 786 (all but first alteration in original) (quoting U.S. CIVIL SERV. COMM'N, ATTACHMENT TO FEDERAL PERSONNEL MANUAL LETTER NO. 551-7, at 11-12 (July 1, 1975), *reprinted in* OFFICE OF PERS. MGMT., BASIC FEDERAL PERSONNEL (continued...)

The court quoted the letter to highlight the government's flawed jurisdictional argument, not to definitively establish the standard of proof once the parties proceeded to trial. In short, the "reasonable doubt" language was not a legal statement on the standard of proof for applying FLSA exemptions to private sector employees.

When *Dayhoff* was decided, common law could have directed us to a preponderance of the evidence standard. In *In re C.L.T.* we examined Supreme Court precedent for the circumstances under which proof beyond a reasonable doubt is required.[49] The case involved greater due process concerns than an overtime wage claim because it involved termination of parental rights.[50] Even so we explained:

> The [Supreme] Court recognized that the law has produced essentially three standards or levels of proof for different types of cases: proof by preponderance of the evidence, proof by clear and convincing evidence, and proof beyond a reasonable doubt. The Court suggested that in civil proceedings, even when "particularly important individual interests" are implicated, the due process clause requires that the moving party satisfy only the "clear and convincing" standard of proof.[51]

We held that when the state seeks to terminate parental rights because of unfitness, the due process clause requires only a clear and convincing standard of proof.[52] But in civil cases without heightened due process concerns, the established common law is that the

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[48] (...continued)
MANUAL (1988)).

[49] 597 P.2d 518, 525 (Alaska 1979).

[50] *Id.* at 524-25.

[51] *Id.* at 525 (citations omitted) (quoting *Addington v. Texas*, 441 U.S. 418, 424-45 (1979)).

[52] *Id.* at 526.

standard of proof is a preponderance of the evidence.[53] Moreover, FLSA cases previously had established that asserting a FLSA exemption is an affirmative defense;[54] affirmative defenses generally are established by a preponderance of the evidence.[55]

The AWHA contains important protections for workers, but in *Dayhoff* we provided no indication (nor has Buntin persuasively shown) that the AWHA's protections invoke the same due process concerns as parental rights termination

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[53] *See Herman & MacLean v. Huddleston*, 459 U.S. 375, 387, 389-90 (1983) (noting general rule in civil cases that party must prove its case by preponderance of evidence); *Addington*, 441 U.S. at 423-24 (explaining three levels of proof for different types of cases and describing preponderance of evidence standard as appropriate standard for "typical civil case involving a monetary dispute between private parties"); *Fernandes v. Portwine*, 56 P.3d 1, 5 (Alaska 2002) ("Preponderance of the evidence is the general burden of persuasion in civil cases."); *Cavanah v. Martin*, 590 P.2d 41, 42 (Alaska 1979) (adopting preponderance of evidence standard for civil cases after considering other states' standards and commentary); *see also* 2 KENNETH S. BROUN ET AL., MCCORMICK ON EVIDENCE § 339 (Robert P. Mosteller ed., 8th ed. 2020 update) ("According to the customary formulas a party who has the burden of persuasion of a fact must prove it in criminal prosecutions 'beyond a reasonable doubt,' in certain exceptional controversies in civil cases, 'by clear, strong and convincing evidence,' but on the general run of issues in civil cases 'by a preponderance of evidence.' " (citations omitted)).

[54] *Corning Glass Works v. Brennan*, 417 U.S. 188, 196-97 (1974) (discussing burden-shifting under Equal Pay Act and explaining "the general rule [is] that the application of an exemption under the Fair Labor Standards Act is a matter of affirmative defense on which the employer has the burden of proof").

[55] *Nordin Constr. Co. v. Whitney Bros. Plumbing & Heating, Inc.*, 441 P.2d 122, 125 (Alaska 1968) (defendants required to prove affirmative defense by preponderance of evidence); *see also Martin v. Weaver*, 666 F.2d 1013, 1019 (6th Cir. 1981) ("The burden of proving an affirmative defense by a preponderance of the credible evidence is on the party asserting the defense."); *Dickenson v. United States*, 353 F.2d 389, 392 (9th Cir. 1965) (defendant employer must prove exemption by preponderance of evidence).

proceedings. It was error to take *Adam* out of context in *Dayhoff*, and we should have adopted the preponderance of the evidence standard of proof. The beyond a reasonable doubt standard of proof adopted in *Dayhoff* was originally erroneous.

b. Replacing the standard with preponderance of the evidence would do more good than harm.

Before we can overrule *Dayhoff*, we also must determine that overruling our decision would do more good than harm.[56] Schlumberger spent little effort in its brief analyzing this element, other than stating that "application of the 'beyond a reasonable doubt' standard . . . would be totally inconsistent with the Alaska [l]egislature's intent and would lead to inconsistent results in cases involving both the FLSA and AWHA exemptions." Amicus curiae makes more helpful and practical arguments in favor of overruling *Dayhoff*. Amicus curiae asserts that Alaska relies on small businesses with a flexible workforce and that the current beyond a reasonable doubt standard discourages investment and growth in Alaska and encourages employers to outsource labor or engage independent contractors.

When determining if overruling precedent would do more good than harm, "we must balance the benefits of adopting a new rule against the benefits of stare decisis."[57] The standard of proof "serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision."[58] Absent a statutorily specified higher burden or particularly important individual interests at stake, it is well established that the standard of proof in civil cases is a preponderance of the

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[56] *State Commercial Fisheries Entry Comm'n v. Carlson*, 65 P.3d 851, 859 (Alaska 2003).

[57] *State v. Carlin*, 249 P.3d 752, 761-62 (Alaska 2011).

[58] *Addington*, 441 U.S. at 423.

evidence.[59] A preponderance of the evidence standard "allows both parties to 'share the risk of error in roughly equal fashion.' "[60]

Suits for unpaid wages brought under AWHA are about money. Heightened standards of proof generally are reserved for cases in which the government seeks to deprive an individual of a liberty interest or a fundamental right, such as criminal cases and cases involving termination of parental rights.[61] Claims for unpaid overtime compensation simply do not raise the same concerns as do cases that may result in the deprivation of liberty or fundamental rights. In a dispute over the applicability of

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[59] *See, e.g.*, *Grogan v. Garner*, 498 U.S. 279, 286 (1991) (noting silence in statute and its legislative history is inconsistent with view that Congress intended to require special, heightened standard of proof); *Herman & MacLean v. Huddleston*, 459 U.S. 375, 389-90 (1983).

[60] *Herman*, 459 U.S. at 390 (quoting *Addington*, 421 U.S. at 423).

[61] *See, e.g.*, *In re Meredith B.*, 462 P.3d 522, 526 (Alaska 2020) (noting that involuntary commitment proceedings require clear and convincing evidence standard of proof); *Howard v. State*, 583 P.2d 827, 833 (Alaska 1978) (noting that it is prosecution's burden to prove all essential elements of crime beyond a reasonable doubt); *see also* 25 U.S.C. 1912(f) (providing that termination of parental rights under Indian Child Welfare Act requires beyond a reasonable doubt standard of proof); AS 47.10.088(a) (providing that termination of parental rights requires clear and convincing evidence standard of proof); *DeNuptiis v. Unocal Corp.*, 63 P.3d 272, 278-79 (Alaska 2003) (explaining that due process requires at least clear and convincing evidence standard in termination of parental rights cases, involuntary civil commitments, deportation proceedings, and denaturalization proceedings because "[e]ach of these categories involves sensitive liberty interests and each involves attempts by the government to deprive individuals of such interests"). *But see Alaskan Adventure Tours, Inc. v. City & Borough of Yakutat*, 307 P.3d 955, 960 (Alaska 2013) (explaining that party asserting fraud as basis for relief from judgment under Alaska Civil Rule 60(b)(3) must prove fraud by clear and convincing evidence); *Rausch v. Devine*, 80 P.3d 733, 738 (Alaska 2003) (noting presumption that deed was validly delivered can be rebutted only by clear and convincing evidence).

an exemption the employer and employee share the risk of error in roughly equal fashion under a preponderance of the evidence standard. This is appropriate for suits where money, rather than a liberty interest or a fundamental right, is at stake.

Adopting a preponderance of the evidence standard also promotes uniformity in the law and reduces confusion in the trial process. Although we disagree with Schlumberger that the AWHA white collar exemption's text requires us to apply a preponderance of the evidence standard, we agree that there is a benefit to uniformity in the law. The legislature sought to align Alaska law with federal law when it passed the 2005 amendments, and a majority of federal courts ruling on the issue have adopted a preponderance of the evidence standard of proof for the FLSA's exemptions.[62] Interpreting and understanding the requirements of state and federal law can be cumbersome for employers;[63] this is one reason the legislature enacted the 2005

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[62] *See, e.g.*, *Meza v. Intelligent Mexican Mktg.*, 720 F.3d 577, 581 (5th Cir. 2013); *Lederman v. Frontier Fire Prot., Inc.*, 685 F.3d 1151,1157-59 (10th Cir. 2012); *Renfro v. Ind. Mich. Power Co.*, 497 F.3d 573, 576 (6th Cir. 2007); *Yi v. Sterling Collision Ctrs., Inc.*, 480 F.3d 505, 506-07 (7th Cir. 2007); *Dybach v. Florida., Dep't of Corr.*, 942 F.2d 1562, 1566 n.5 (11th Cir. 1991); *Dickenson v. United States*, 353 F.2d 389, 392 (9th Cir. 1965). *But see Morrison v. County of Fairfax*, 826 F.3d 758, 765 (4th Cir. 2016) (holding employers must prove exemption applies by clear and convincing evidence); *see also Mozzarella v. Fast Rig Support, LLC*, 823 F.3d 786, 790-91 (3d Cir. 2016) (employers must prove "plainly and unmistakably" exemption applies); *Fezzard v. United Cerebral Palsy of Cent. Ark.*, 809 F.3d 1006, 1010 (8th Cir. 2016) (same).

[63] As amicus curiae points out, small businesses with a limited workforce and resources are common in Alaska. Small businesses make up 99.1% of businesses and employ over half of all Alaskan employees. U.S. SMALL BUS. ADMIN., 2020 SMALL BUSINESS PROFILE: ALASKA, https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04142939/2020-Small-Business-Economic-Profile-AK.pdf (2020). Amicus curiae explains that "[b]usinesses . . . consider[ing] possibly entering the Alaska market are astonished when they learn that the burden of proof for wage and hour exemptions is beyond a reasonable doubt."

amendments to the AWHA's exemptions. Inconsistent standards of proof between the AWHA's and the FLSA's exemptions mean that an employer may be required to prove, and a factfinder may be required to analyze, whether an employee is exempt from the corresponding exemptions using two different standards. Adopting a preponderance of evidence standard promotes consistency between Alaska and federal law and removes unnecessary confusion from the trial process.

Dayhoff's standard of proof ruling is overruled; the correct standard of proof is preponderance of the evidence.

C. Statutory Construction Of The AWHA's Exemptions[64]

The second certified question asks:

> Following *Encino Motorcars v. Navarro*, 138 S. Ct. 1134 (2018), should exemptions under the Alaska Wage and Hour Act (AWHA) be given a narrow or fair interpretation?

1. *Encino*

In *Encino* employees who worked for a car dealership as "service advisors"[65] alleged that they were denied overtime compensation in violation of the

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[64] When interpreting a statute, "our goal is to give effect to the intent of the law-making body 'with due regard for the meaning that the language in the provision conveys to others.' " *Marlow v. Municipality of Anchorage*, 889 P.2d 599, 602 (Alaska 1995) (quoting *Foreman v. Anchorage Equal Rights Comm'n*, 779 P.2d 1199, 1201 (Alaska 1989)). "We interpret statutes 'according to reason, practicality, and common sense, considering the meaning of the statute's language, its legislative history, and its purpose.' " *Attorneys Liab. Prot. Soc'y, Inc. v. Ingaldson Fitzgerald, P.C.*, 370 P.3d 1101, 1105 (Alaska 2016) (quoting *Municipality of Anchorage v. Stenseth*, 361 P.3d 898, 904 (Alaska 2015)). We apply a "sliding scale approach" in statutory interpretation: "[T]he plainer the language of the statute, the more convincing contrary legislative history must be." *Smith v. Ingersoll-Rand Co.*, 14 P.3d 990, 992 (Alaska 2000) (quoting *Marlow*, 889 P.2d at 602).

[65] 138 S. Ct. 1134, 1139 (2018) ("[Service advisors] 'mee[t] customers; (continued...)

FLSA.[66] The FLSA exempts "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements" at a covered dealership.[67] It was undisputed that "service advisors" are not primarily engaged in selling automobiles and that they are not "partsm[e]n or "mechanic[s]."[68] The parties instead disputed "whether service advisors are 'salesem[e]n . . . primarily engaged in . . . servicing automobiles.' "[69] The Ninth Circuit Court of Appeals interpreted the exemption to require that "salesm[e]n" be primarily engaged in "selling" and "partsm[e]n" and "mechanic[s]" be primarily engaged in "servicing."[70]

The Supreme Court reversed.[71] After considering the dictionary definitions of the terms "salesman" and "servicing," the Court concluded that the statutory language

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[65] (...continued)
liste[n] to their concerns about their cars; sugges[t] repair and maintenance services; sel[l] new accessories or replacement parts; recor[d] service orders; follo[w] up with customers as the services are performed (for instance, if new problems are discovered); and explai[n] the repair and maintenance work when customers return for their vehicles.' " (all but first alteration in original) (quoting *Encino Motorcars, LLC v. Novarro*, 136 S. Ct. 2117, 2122 (2016))).

[66] *Id.* at 1138-39.

[67] *Id.* at 1138 (quoting 29 U.S.C. § 213(b)(10)(A)).

[68] *Id.* at 1140.

[69] *Id.* (alteration in original) (quoting 29 U.S.C. § 213(b)(10)(A)).

[70] *Id.* at 1141.

[71] *Id.* at 1143. In a previous appeal the Supreme Court held that the Ninth Circuit had improperly deferred to a 2011 Department of Labor regulation excluding service advisors as salesmen for purposes of the FLSA exemption. *Id.* at 1138-39. The Court held in that previous appeal that the 2011 rule was procedurally defective and thus not entitled to deference. *Id.* at 1139.

of the exemption did not require employees to be physically involved in the servicing process to qualify as employees "primarily engaged in . . . servicing automobiles."[72] The Court said that "the phrase 'primarily engaged in . . . servicing automobiles' must include some individuals who do not physically repair automobiles themselves but who are integrally involved in the servicing process."[73]

The Court further concluded that "service advisors" are covered under the statutory exemption because the statute exempts salesmen who are primarily engaged in either selling *or* servicing automobiles, trucks, or farm implements.[74] The Court applied the distributive canon of statutory interpretation:[75] "[T]he use of 'or' to join 'selling' and 'servicing' suggests that the exemption covers a salesman primarily engaged in either

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[72] *Id.* at 1140-41; *see* 29 U.S.C. § 213(b)(10)(A).

[73] *Id.* at 1141 (quoting 29 U.S.C. § 213(b)(10)(A)). *But see id.* at 1145 n.2 (Ginsburg, J., dissenting) ("Service advisors do not maintain or repair motor vehicles even if, as the Court concludes, they are 'integral to the servicing process.' The Ninth Circuit provided an apt analogy: '[A] receptionist-scheduler at a dental office fields calls from patients, matching their needs (e.g., a broken tooth or jaw pain) with the appropriate provider, appointment time, and length of anticipated service. That work is integral to a patient's obtaining dental services, but we would not say that the receptionist-scheduler is 'primarily engaged in' cleaning teeth or installing crowns." (alteration in original) (citation omitted) (quoting *Navarro v. Encino Motorcars, LLC*, 845 F.3d 925, 932 (9th Cir. 2017))).

[74] *Id.* at 1141 (majority opinion).

[75] "The distributive canon . . . recognizes that sometimes '[w]here a sentence contains several antecedents and several consequents,' courts should 'read them distributively and apply the words to the subjects which, by context, they seem most properly to relate.' " *Id.* (alteration in original) (quoting 2A NORMAN J. SINGER & SHAMBIE SINGER, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 47:26, at 448 (rev. 7th ed. 2014)).

activity."[76] The Court concluded that the statutory language of the exemption therefore demonstrated that "service advisors" were exempt from the FLSA's overtime pay requirements because they were "salesm[e]n . . . primarily engaged in . . . servicing automobiles."[77]

Important to this case, the Court devoted a section of its opinion to reject previous statements that exemptions to the FLSA should be construed narrowly.[78] The Court explained:

> The narrow-construction principle relies on the flawed premise that the FLSA "pursues" its remedial purpose "at all costs." But the FLSA has over two dozen exemptions in § 213(b) alone, including the one at issue here. Those exemptions are as much a part of the FLSA's purpose as the overtime-pay requirement. We thus have no license to give the exemption anything but a fair reading.[79]

Following *Encino*, many federal courts have concluded that they are required to give FLSA exemptions a fair reading rather than a narrow one.[80]

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[76] *Id.* at 1141-43.

[77] *Id.* at 1143 (quoting 29 U.S.C. § 213(b)(10)(A)).

[78] *Id.* at 1142; *see Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388, 392 (1960) ("We have held that these exemptions are to be narrowly construed against the employers seeking to assert them and their application limited to those establishments plainly and unmistakably within their terms and spirit.").

[79] *Encino*, 138 S. Ct. at 1142 (citations omitted) (quoting *Am. Express Co. v. Italian Colors Restr.*, 570 U.S. 228, 234 (2013)).

[80] *See, e.g.*, *Hurt v. Commerce Energy, Inc.*, 973 F.3d 509, 530-31 (6th Cir. 2020); *Smith v. Ochsner Health Sys.*, 956 F.3d 681, 683 (5th Cir. 2020); *Jordan v. Maxim Healthcare Servs., Inc.*, 950 F.3d 724, 727-33 (10th Cir. 2020); *Isett v. Aetna Life Ins. Co.*, 947 F.3d 122, 128-29 (2d Cir. 2020); *Sec'y U.S. Dep't of Labor v. Bristol* (continued...)

2. AWHA exemptions explicitly tied to FLSA

Schlumberger argues that in light of *Encino* Alaska courts must give the AWHA's exemptions a "fair reading rather than a narrow construction." Schlumberger further contends that because the legislature intended the AWHA's exemptions to be interpreted the same as their federal counterparts, *Encino* requires Alaska courts to adopt the same interpretative standard as that for the FLSA.

Buntin makes three main counter arguments. First, he contends that *Encino* was wrongly decided. Second, he contends that FLSA interpretations do not disturb our AWHA precedent and that following *Encino* would violate stare decisis. Third, he contends that *Encino*'s "fair interpretation" standard is "vague" and "does nothing to assist court[s] in deciding cases or parties in predicting the outcome of those cases."

The legislature amended the AWHA in 2005 to ensure the "white collar" exemptions under AS 23.10.055(a)(9)(A) were defined "and interpreted in accordance with [the FLSA] as amended, or the regulations adopted under those sections."[81] The Supreme Court's holding in *Encino*, that the FLSA's exemptions must be given a "fair reading," is an interpretation of the "white collar" exemption under the FLSA and therefore is binding on all courts applying the FLSA's exemptions unless the Court changes its ruling. The "white collar" exemptions under the AWHA therefore must be given a fair reading rather than a narrow construction.

It was a legislative choice to link the AWHA's white collar exemptions with the FLSA counterparts, and ignoring *Encino* would undermine the legislature's intent. Although we are the final authority on interpreting Alaska law, Alaska law

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[80] (...continued)
Excavating, Inc., 935 F.3d 122, 135 (3d Cir. 2019).

[81] AS 23.10.055(c)(1); ch. 90, § 1, SLA 2005.

requires that courts applying the AWHA's white collar exemptions refer to and follow federal interpretations of the FLSA counterparts. The fact that the Supreme Court's interpretation in *Encino* may be vague does not change the statute's directive.

AWHA exemptions expressly linked to FLSA exemptions must be given a fair rather than narrow reading.[82] Absent legislative direction, AWHA exemptions not expressly linked to FLSA exemptions continue to be narrowly construed.[83]

V. CONCLUSION

The first certified question involves the standard of proof applicable to an assertion that an employee is exempt from the AWHA's overtime and minimum wage requirements. The standard of proof is the preponderance of the evidence.

The second certified question is one of statutory construction. *Encino* requires that courts give FLSA exemptions a "fair reading." The legislature has specified that certain AWHA exemptions must be interpreted like the corresponding federal exemptions. Those exemptions, such as the white collar exemptions, accordingly must be interpreted consistent with *Encino*.

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[82] One question left open in today's decision is whether Alaska courts are required to apply federal rules of statutory interpretation when deciding cases involving AWHA exemptions explicitly linked to federal interpretation, as white collar exemptions are. The parties did not brief or argue this issue, and we do not decide it today. We note, as some scholars have pointed out, that it is not entirely clear what the federal rules of statutory interpretation are, and, where they exist, how binding they are. *See* Abbe R. Gluck, *Intersystemic Statutory Interpretation: Methodology as "Law" and the* Erie *Doctrine*, 120 YALE L. J. 1898, 1909-11 (2011) (noting that federal rules of statutory interpretation, with some notable exceptions, are largely unresolved).

[83] *See Whitesides v. U-haul Co. of Alaska*, 16 P.3d 729, 732 (Alaska 2001) (holding AWHA exemptions must be narrowly construed). We have previously noted that although federal court interpretations of the FLSA are "helpful in interpreting consistent aspects of the AWHA," they are not binding. *McKeown v. Kinney Shoe Corp.*, 820 P.2d 1068, 1070 n.2 (Alaska 1991).